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COMMENTS SUBMITTED TO
THE DEPARTMENT OF STATE
REGARDING PROPOSED REGULATIONS FOR
THE HAGUE CONVENTION

DECEMBER 14, 2003

BY

CHILD WELFARE LEAGUE OF AMERICA

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Adoption Regulations Docket Room
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The Child Welfare League of America (CWLA) welcomes this opportunity to offer comments on the behalf of our 1,000 public and private nonprofit child-serving member agencies nationwide for the regulations on the Hague Convention.

Our comments are as follows, which are chronological with the proposed regulations:

Preamble:

C. Distinction between "Agency" and "Person"

CWLA is pleased that the Convention favors the use of non-profit bodies, and that accredited bodies pursue only non-profit objectives.

D. Federalism Issues

CWLA is pleased that the determination for emigrating children is placed on State courts. The assumption is correct, at least for children in the child welfare system, that these determinations will be made in the context of adoption or placement proceedings. We wish to clarify that the fees that States may be allowed to charge to provide this service (which will undoubtedly require casework either in the state agency or within the court system) will be paid by the primary provider. We further wish to clarify that States may also determine that they will provide the service. Additionally we request that the suggestion that States may refrain from Convention adoptions or placements in their jurisdictions be deleted. The state of residence of adoptive parents should not determine whether or not they can adopt internationally.

Subpart A – General Provisions

We request that the regulations more clearly define "Child Welfare Services". Is this limited to only services provided by the public child welfare agency in each state/county which may include a variety of services such as adoption, foster care, child protection, housing, child care, etc, as well as those private agencies that they subcontract with? Or is it in the broader sense that all services for children are "Child Welfare Services" which may include, for instance, attending YWCA, after school activities, Day Treatment, Summer Respite, etc?.

We further request clarification and definitions for post adoption services, post placement services, disruption, displacement, and dissolution.

We offer the following:

Post adoption Services: the provision of supportive services to adoptive families to promote the well being of adoptees and their families, the stability of the adoptive placement, and the prevention of adoption disruption, displacement, or dissolution. Supportive services may include, but are not limited to: family

education, information and referral, psychosocial services, mediation, support groups, foster care when needed, respite, counseling, search, and provision of additional non-identifying medical and genetic information if known. Additionally reports from some nations are required after the adoption finalizes.

Post Placement Services: Services provided after the adoptive placement, prior to the adoption finalization. This would include all above services.

Disruption: Adoptive placement that does not finalize in an adoption.

Displacement: Placement of a finalized adoptee into an out of home care situation, such as public foster care without terminating parental rights. Some states make this available so that the child may receive mental health in-patient treatment.

Dissolution: Dissolving the adoptive placement through termination of parental rights.

96.7 Authorities and Responsibilities of an Accrediting Entity

(a) (7) we suggest a statement be added that this section in no way prohibits the accrediting body from reporting information of suspected child abuse to the responsible state authority.

(a) (8) CWLA believes it is essential for the accrediting authority to be involved in the transfer of cases, however, we recommend that the Department of State develop specific criteria in the final regulations for the selection of organizations to accept the transfer of these cases.

Subpart B – Selection, Designation, and Duties of Accrediting Entities

96.8 Fee Charged by Accredited Entities: CWLA agrees that a portion of the fee charged should cover the Complaint Registry and that applicants will pay a single nonrefundable fee that will cover both the pre and post accreditation/approval work of any accrediting entity. We request clarification that if a state chooses to be an accrediting entity they would be able to charge similar fees.

96.14: Providing adoption services using supervised providers, exempted providers, public bodies, or public authorities

We are pleased that the regulations established as a principle a "Primary Provider" in each Convention case and that it is the Primary Provider's responsibility to assure that all six of the services listed in the definition of adoption services are provided in each Convention case and that they are responsible for supervision non-accrediting agencies and non-approved persons that are providing adoption services in the case. (96.45, 96.46)

Additionally, although this is a change, we agree that the primary provider must assume legal responsibility for the actions of supervised providers, both in the United States and overseas. Too many families and overseas birth parents have been hurt to ignore the mandate that there must be close coordination between the agencies and overseas staff and service providers.

We feel that if an entity is not considered a supervised provider, such as a public body or any other exempted entity, they should still be required to work with, and report to the primary provider in Convention Cases. We anticipate delays within the public system if these entities are not required to comply with reporting requirements, or timely completion of their service role.

96.27 Substantive criteria for evaluation application for accreditation or approval
CWLA agrees with mandating substantial compliance with the standards in subpart F. We agree that the use of an accreditation system based on substantial compliance with the opportunity to improve is more consistent with the regulatory approach. We also assume that experienced accrediting entities will deny accreditation or approval or provide a notice of adverse action if needed. We wish to request clarification as to how, in the future; changes to the standards may be made. We assume, and suggest that that public comment will be allowed at that time.

96.31 Corporate Structure

(b) We wish to suggest that the approved person is a licensed individual, or is a for-profit entity organized as a corporation, company, association, firm, partnership, society, joint stock company, or other legal entity under the laws of any State. Social Workers as well as attorneys should be licensed if they are to become approved persons. Approved persons, both attorneys and social workers, should be able to be found liable for censure if appropriate.

Financial and Risk Management

96.33 Budget, audit, insurance and risk assessment requirements
CWLA agrees that agencies must be protected by insurance, depending on their legal risk. CWLA requests clarification as to the term "Professional Assessment of Legal Risk". Is a third party assessment necessary, or can the insurance provider estimate the risk to the agency, as part of his proposal of coverage? Many of our member agencies currently carry one million dollar policies, however, if they are providing only adoption services they may be paying a higher rate, or denied. For the past four years the CWLA National Advisory Committee on Adoption has held discussions on insurance coverage for domestic as well as international adoption agencies. We suggest that a Federal insurance commission similar to FDIC be considered to assure agencies that can be accredited can be covered.

Member agencies have also asked for clarification as to the amount each officer and employee of the agency are to be bonded.

96.35 Suitability of agencies and persons to provide adoption services consistent with The Convention

(5) We suggest that if the individual is a social worker, they provide a certificate of good standing from their state licensing board, or an explanation of why he or she is not in good standing, accompanied by relevant documentation. Any disciplinary action taken by the individual's licensing board must immediately be reported by the social worker to the accrediting entity, regardless of whether the action relates to inter-country adoption.

96.38 Training requirements for social service personnel

(9)(d) – We wish to request clarification that staff exempted from initial training required in (a), and/or (b) must also complete no less than 20 hours of training each year, or more if required by State law which can be provided through participation in seminars, conferences, etc.

96.39 Information disclosure and quality control practices

(f) (1) CWLA is aware that some European countries, particularly members of the European Union, prohibit the use of the Internet to place children for adoption. We suggest that this information be made available at the time of accreditation or approval of all agencies and persons to ensure compliance with the laws of other nations.

96.40 Fee policies and procedures

(f)(2) Although the payment of almost \$800.00 once may not be a serious expense for adoptive parents, allowing agencies to expend up to \$800.00 without specific consent of the family several times would justify serious concern for many adoptive families. We suggest that the number of times funds in excess of \$800.00 be restricted, even with a signed waiver to the notice and consent requirement completed in advance.

96.41 Retention, preservation, and disclosure of adoption records

(a) Retention of records is only addressed in 29 State laws. We suggest that States be encouraged to retain international adoption records permanently, unless addressed differently in state law.

We suggest that section (b, c, d, and e) comply with State law. For section (d) we suggest that this section be changed to read: "The agency or person protects the privacy of birth parents(s), prospective adoptive parents(s), and adoptee(s) to which adoption services were provided. Giving permission to delete sections of the adoption record that may contain information that may be considered "sensitive" is allowing judgmental action. The adoption record is a historical document; all information must be available and should be given if allowed by State statute.

(f, g) We suggest that the plan for the retention of each closed adoption agency's closed inter-country adoption records be filed with the Central Authority.

96.42 Case Tracking, data management and reporting

(1) We suggest that the ethnicity of the child and the birth family be added to the data required for children both immigrating to the United States and those emigrating from the United States.

We further suggest that a statement be made for every child emigrating from the United States that the placement is being made in compliance with the Indian Child Welfare Act and that the child is not a Native American, or that the tribe has been notified and permission for out of country placement from the tribe has been received. This best protects the child as tribal rights follow the child into the adoption. Additionally, if a Native American child is placed without tribal permission, the placing agency may be subject to suit in Federal court.

(4) Information about disruptions/dissolutions should also be tracked whether the children are replaced in another country, or in the US.

Finally, the data system should be clear that all elements tracked should be for both sets of children. If information is not known concerning an element, the tracking system should provide an appropriate code.

96.44 Acting as Primary Provider,

96.45 Using Supervised Providers in the United States, and

96.46 Using Supervised Providers in Other Convention Countries

If clients are billed directly for services the foreign supervised provider or the supervised provider in the United States will also provide a copy of the itemized bill of all fees and expenses to be paid and the explanation of how and when such fees and expenses will be refunded if the service is not completed to the Primary Provider as well as the client.

Please see additional comments regarding primary providers in 96.14 above.

96.47 Preparation of Home Studies in Incoming Cases

We suggest that the regulations spell out how long a home study for intercountry adoption will be valid (months or years) and the renewal process.

96.48 Preparation and Training of Prospective adoptive parent(s) in incoming cases

(c) (4) Training that is more than half video, computer-assisted, or distance learning methods using standardized curricula should not be used. These are all excellent tools, however, training needs to be as much as possible, interactive, so that the agency as well as the family is assured that the family is receiving and truly understanding all the information.

(g) Families should not be exempted from all of the training. Although the general training may be similar, child specific information is necessary, even if the family has already adopted from the sending country. Additionally, experience with another country

does not translate to knowledge about adoption from that country, or resources in the United States.

96.50 Placement and post-placement monitoring until Final Adoption in Incoming Cases

(2) We are aware that some children may be replaced in the sending country, due to a disruption or dissolution. Will the United States Central Authority assume the costs of returning the child if the agency or person is no longer in the picture? Will the agency or person be required to provide escort, as well as payment for transportation? Will the adoption in the United States be set aside, or be allowed to stand, providing the child with permanent inheritance rights?

(4) (h) (1) We suggest that the Central Authority set up a database "tickler" system to track adoptions that are to finalize in the United States. For adoptions that do not finalize within a set time a decision should be made specific to the child as to whether it is in his best interest to remain in this country in a guardianship arrangement or return to his country or origin, especially if birth family can be located that wish to provide a home for him. Note: Unfortunately, even with the best of intentions, the rare case happens where a family does not finalize, either due to lack of funds, a change of heart, circumstances, or family pressure.

96.51 Post Adoption Services in Incoming Cases

(c) Post adoption reports required by the child's country of origin should be a collaborative effort between the agency or person and the adoptive parents. If the adoptive parents do not provide the report the agency or person should make a site visit and provide the report. This requirement by the sending country should be a primary discussion point prior to the placement of the child; and the primary agency should have responsibility to see that the reports are made.

(d) In addition to receiving permission from the Central Authority to return a child to a sending country, the Central Authority shall also be notified if the child is replaced in the United States.

Health and Human Services is required through the International Adoption Act (IAA) to collect information on Post Adoption Services, if provided by the States.

Standards for Cases in Which a Child is Emigrating from the United States (Outgoing Cases)

96.53 Background studies on the child and consents in outgoing cases

(a) We recommend that the child's background study should also include a psycho-social assessment, non-identifying medical and genetic information regarding the child and his ancestors.

(c) (4) all mothers should consent or have had their rights terminated. Both parents should consent. If both have not consented, or had their rights terminated a court order

should be obtained stating that according to the sending state's law the child is available for adoption.

(c) (5) we recommend adding that there be pre-placement visiting with the adoptive parent(s) as appropriate for the child's age.

(d) We wish to suggest that if the child is twelve years of age or older, consistent with most state laws, his wishes shall be considered before determining that an inter-country placement is in the child's best interest.

(e) CWLA is not aware of any State law that requires that adoptive parents cannot be given the child's identity prior to the adoption finalization.

96.54 Placement standards in outgoing cases

(a) (2) we recommend changing to "at least 60 days after the birth of the child or the child's parental rights have been terminated, whichever is later." This recommendation is designed to avoid a rush to place children outside of the United States, and to allow sufficient time to list the child on a state or national exchange, such as AdoptUSKids, and to identify prospective adoptive parents in the United States.

(b) In the case of child emigrating from the United States that is being placed from a State child welfare system, current Federal law regarding priority of placement with relatives, if appropriate, and compliance with the Multi-Ethnic Placement Act and the Interethnic Placement Act (MEPA-IPA) must be followed.

(f) A reference needs to be made in this section to provide the prospective adoptive parents with a copy of the medical record of the child prior to the adoptive placement, along with contact information on the physician who completed the report. The standard regarding medical records for emigrating children should not be less than it is for immigrating children.

Additionally, 96.54 needs to ensure that the agency with priority shall include in the contract with the adoptive parents, that the agency will be informed if the adoption disrupts or dissolves, and an agreement made as to who will arrange and pay for the child to return to the United States if the Central Authority determines this is in the child's best interest.

96.55 Performance of Hague Convention communication and coordination functions in outgoing cases

Notice should be given to the Central Authority if the child is to maintain dual citizenship if eligible.

22 CFR Part 98 SUMMARY

We suggest that the Convention records be retained permanently.

Education/Caseload Size

Further, CWLA agrees that individuals performing home studies or child background studies should have a minimum of a master's degree in social work. We question, however, the dropping of "caseload size" from an earlier version of the regulations. Experience has shown, and the CWLA Standards of Excellence in Adoption Services which are developed by consensus of the leading national experts in adoption, indicate that a caseload of 30 - 35 is the absolute maximum for international adoption. This number is far greater than the caseload recommendations for domestic public (10-12) and private adoption (20-25). We encourage you to review the elimination of this requirement.

Complaint Registry

CWLA applauds the inclusion of a stand alone Complaint registry. We wish to encourage the writers to consider making this Registry more of an Ombudsman Service, such as that in Norway, so that they will be able to refer and assist, as well as review and monitor complaints. Our sense is that the services of an agency providing Ombudsman Services will benefit everyone. We are unsure, however, how the prohibition of retaliatory action or other conduct by the agency toward a prospective family who has filed complaint will be monitored - retaliation will be hard to prove; the family will continue to wait. In adoption the "squeaky wheel" does not get the child.

We also request clarification as to how a complaint should be filed by the child's physician, or other interested or involved party who may not know the child's agency, but is aware of possible irregularities. We, again, assume that the Complaint Registry will record the complaint and see that it is processed appropriately. For instance, we are aware of airline pilots who were aware of problems with the Marshall Islands but did not know where or how to file a complaint.

Access to Adoption Records

CWLA concedes that access to adoption records where adoptions are finalized in the state should be governed by that State law, however, adoption records for adoptions that finalize in another country should be accessible through the Convention Record. The Convention on the Rights of the Child, ratified by all nations except the US is clear that children have a right to their identity - especially those children who are adopted from a foreign country. The reality is that children from only a couple of countries finalize in the United States; the rest are finalized abroad. We suggest that the Ombudsman Office suggested above be prepared to provide information as needed to adoption parents, birth parents, and adoptees regarding adoptions in another country.

We assume that children that emigrate from the United States will contact their adopted countries Central Authority for their information if their adoption finalizes abroad, and their sending state if their adoption occurred in the United States.

Preservation of Adoption Records

CWLA believes there should be a uniform Federal time frame for the retention of adoption records. We comment by quoting from the CWLA Standards of Excellence for Adoption Services (2000) which are for public, private, and international adoption state:

7.42: Length of Time for Retaining Case Records states: The agency providing adoption services should permanently retain case records for all children for whom it has provided adoption services. Permanent case records may be maintained in forms other than on paper (7.40)

7.40: If multiple agencies are involved in an adoption, the agency with legal custody of the child should preserve the permanent case record.

Permanent retention of adoption records is for the public good.

Subpart L – Oversight of Accredited Agencies and Approved Persons by the Secretary

CWLA suggests that in addition to the following adverse actions; suspension, cancellation, or temporary or permanent debarment, the regulations allow for a probationary period in which the agency could continue to operate, yet work on a time limited (three month) program improvement plan. Only one probationary period could be allowed, however, in this manner the agency would not have to cease operation, and could correct their deficiencies timely.

Working Group

CWLA applauds the establishment of a working group to facilitate the exchange of information about the accreditation and approval process and offers any assistance needed to this group in the future.

Deeming

CWLA would like for the writers to reconsider their stance on “deeming” which would permit agencies that are already voluntarily accredited under a different accreditation system, or by one of the designated accrediting entities to be “partially deemed”, depending on the standards that are selected. We are aware, for instance, that COA has provided you with a chart delineating the similarities, item by item, of their requirements, and that of the proposed regulations. It is possible that JACHO also has similar provisions.

In the interest of timely implementation, it would appear to be best practice that agencies that are currently certified for standards required by the Hague Convention be allowed to "skip" re-proving those standards, which would make their review shorter and less expensive. Perhaps these agencies could be determined to be those who will be reviewed in three years. CWLA feels that the use of "partial deeming" should be available for currently accredited organizations providing intercountry adoption services. We feel this is consistent with the Intercountry Adoption Act as a way to recognize proven compliance with standards that are sufficiently similar to standards in the proposed and (eventually) the final rules.

Closing

Thank you for allowing CWLA to provide comments regarding the proposed regulations. We look forward to continuing to work with the Central Authority in the implementation of The Hague Convention and wish to offer our services in any way needed.

If you have questions regarding the above comments please contact Ada White at 225-683-9233, or awhite@cwla.org.